RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
November 19, 2014
1:00 p.m.

REPORTED BY:

John Fahrenwald

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520) 624-8644
(Meeting commenced at 1:04 p.m.)

CHAIRMAN McCUSKER: We're going to call the meeting to order. The official clock is 1:04 by my watch. We had a text from Jannie that she's running late and the same text from Cody.

Right, Michele?

They are both running late. And of course, now there are just six of us alive and well. So we're a quorum, right, Mr. Collins?

MR. COLLINS: Correct.

CHAIRMAN McCUSKER: So let's start with the pledge.

(Pledge of Allegiance recited.)

CHAIRMAN McCUSKER: Michele, call the roll.

MS. BETTINI: Chris Sheafe?

TREASURER SHEAFE: I am here.

MS. BETTINI: Fletcher McCusker?

CHAIRMAN McCUSKER: Here.

MS. BETTINI: Mark Irvin?

SECRETARY IRVIN: I'm here.

MS. BETTINI: Jeff Hill?

MR. HILL: Here.

CHAIRMAN McCUSKER: And we did acknowledge that the four of us are a quorum, right, Counsel?

MR. COLLINS: True.
CHAIRMAN McCUSKER: You have the transcript from the October 17th meeting. They are verbatim transcripts but still need our discussion and approval.

TREASURER SHEAFE: Move to approve.

SECRETARY IRVIN: Second.

CHAIRMAN McCUSKER: All in favor, say aye.

(Ayes.)

(The Board voted and the motion carried.)

CHAIRMAN McCUSKER: And we have an Executive Session on the schedule. I would need a motion to -- 

SECRETARY IRVIN: So moved.

TREASURER SHEAFE: And second.

MR. MOORE: It's been moved and seconded we recess to the Executive Session. All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: We'll see you back here in about an hour.

(The Board adjourned to Executive Session at 1:06 p.m.)

(Meeting reconvened at 1:56 p.m.)

CHAIRMAN McCUSKER: Okay. If we could get a motion to reconvene.

SECRETARY IRVIN: So moved.
CHAIRMAN McCUSKER: Second, please.

MR. RITCHIE: Second.

CHAIRMAN McCUSKER: All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: Thank you.

And good afternoon, everyone.

If you haven't read the paper or watched our website, you'll notice that Mr. Alberto Moore is not seated with us. He submitted his resignation to the Governor a couple weeks ago -- Michele, is that right? -- last Friday.

MS. BETTINI: The 9th.

MR. COLLINS: The 9th. I believe it was the 9th.

CHAIRMAN McCUSKER: I think it's appropriate to remind the public, we all serve at the pleasure of our appointors. The Governor, Governor-Elect Ducey controls five of our nine seats.

Mr. Hill and Ms. Cox are gubernatorial appointees, as was Mr. Moore. We have a new Speaker as well. The Speaker controls two seats. Mr. Irvin and Mr. Ritchie are Speaker appointees. And Chris and I are appointed by the President and the senate.

So it's entirely conceivable you could see some continued transition of Board members. And speaking for myself, and I think for all of us, we're perfectly calm and cool and collected about all of that.
Over the last couple of years, I think we've really established a nice baseline for this District. Our meetings are public. Our -- they're transcribed verbatim, so we've taken all the mystery out of what happens in these meetings. But moreover, our financial statements are all public. Every check we write is posted to the website in realtime; every contract we enter is posted; every agreement we have is easy for the public now to follow.

And what I've heard from our legislative leadership is we've really become a model organization. And if they were do a TIF over again, I think what we've established in terms of accountability and transparency -- we now have an annual audit. Had any of these things been in place I think between 1999 and 2009 you probably would have had a very different outcome with Rio Nuevo.

So we're all eager to see what the Speaker and the Governor do with our the appointments. But, in the meantime, we'll do the business as we have always done, transparent and accountable.

Dan, do you want to give us a quick update on where we are financially?

MR. MEYERS: Dan Meyers, chief financial officer for Rio Nuevo.

Okay. As of October 30th, we have the following balances in the bank. Alliance Bank is our primary
operating account, has $4.9 million in it. Another account at Alliance has approximately 5 million. Bank of Tucson, which we do payroll and collect rents and things like that out of there, we have about $290,000 in it.

The City of Tucson, currently, as of October 31st, had $300,000 in their pooled fund. Since then, about 220 of that was paid to Concord on one of the pay applications. So we've got somewhere between 70- and $80,000 in there as of today. I've been working with the City. And I think we're going to hang on to that until we finalize the Arena and pay some of the retention out of that to close that account out at that time, just in case we have some of the little incidental expenses, fees and permits, that get run through that account.

So that being said, our current cash balance as of October 31st is approximately $10.5 million.

Commitments that remain unpaid at this point in time are approximately 9.4 million. Meaning we have about -- and one of those commitments is the garage at the new Marriott Hotel, which is $4.3 million, approximately. And that's still a couple years out. But including that commitment, we've got about $1.1 million sitting that's been uncommitted at this point in time.

CHAIRMAN McCUSKER: Let's put an asterisk or something on that 4.3 million, Dan, just a footnote as to
when that would come due.

MR. MEYERS: Okay. Yeah. I've got on there, not in current year, but I could make that a little more . . .

CHAIRMAN McCUSKER: It's actually due -- Mark, how does that work? It's . . .

SECRETARY IRVIN: It would be due after the building's been completed, a certificate of occupancy has been issued, and we've had an official closing and they've signed the lease agreement leasing back all those spaces.

And they're anticipating breaking ground in April. I'm kind of thinking we're probably 17 months from there before we need to write that check.

CHAIRMAN McCUSKER: In talking with Beach, as our year end audit, because we have committed to that, they want us to treat it as a commitment, is why you're seeing it now. Although, as Mark suggested, it's probably a year and a half out before we actually have to close on those funds.

MR. MEYERS: All right. Anybody have any questions?

CHAIRMAN McCUSKER: Any questions for Dan?

Thank you, sir.

MR. MEYERS: You bet.

CHAIRMAN McCUSKER: Mr. Collins, do you want to update us on the Arena side and the negotiations with Nor-Gen?
MR. COLLINS: Mr. Chairman, Members of the Board, as you all remember at the August 26th meeting, this Board voted to proceed forward with negotiations with the No. 1 ranked proposer, Nor-Generations.

We have been negotiating and exchanging drafts and memoranda with Nor-Generations. So the negotiations are ongoing. And the optimistic target is, to be able to bring back to you folks a substantial agreement or perhaps even a full-blown agreement by your December meeting.

CHAIRMAN McCUSKER: What's the date, Michele, of our December meeting?

MS. BETTINI: The 17th.

CHAIRMAN McCUSKER: December 17th.

Any questions for Mark on the Nor-Gen status?

All right. While you're up there -- well, the deed -- I guess we're really not talking about the deed, are we. It's not on the public agenda.

MR. COLLINS: No. The public agenda is, we've agendized the Hydro Geo Chem agreement that you had tabled before.

CHAIRMAN McCUSKER: Okay. So moving to that, you'll remember that we have a proposal from Hydro Geo Chem. It's a $61,000 proposal to provide technical support in consultation regarding the West Side Parcel, which I will just comment, we are dangerously close to having a deed.
MR. COLLINS: Mr. Chairman, you are dangerously close to having a deed.

CHAIRMAN McCUSKER: Right. We tabled this at the last meeting regarding questions about this work and, you know, hadn't it been done before? Could it be updated? We asked them to look into that. This is the response that I received from the engineer.

In response to your query, we are not aware of any current data related to the methane production at the A-Mountain landfill. Additionally, whatever historical data is available -- is available is not likely to provide the necessary information regarding the potential methane impact to plantings or other distribution of methane in the areas of interest. Please let me know if I can provide additional assistance.

So what we're trying to do there is to determine what sections of that landfill are, A, buildable; B, plantable; or none of the above.

And we probably will not get there without some additional work.

TREASURER SHEAFE: Mr. Chairman, I would like to move that we proceed with Hydro Geo Chem as proposed and direct staff to take action on putting a final proposal together so it can be approved.

MS. COX: Second.
CHAIRMAN McCUSKER: Okay. So we have a proposal.

It's for $61,000.

So if you approve it, they can begin work immediately.

Mark, we don't -- do we need anything else? Do we need an agreement with them?

MR. COLLINS: You do, Mr. Chairman. But we can use, as a template, the other agreements that we've had. So we can put that together rather quickly. But the proposal is a proposal. You need to have certain provisions -- as a governmental body, you need to have certain provisions in it.

And what we do is we create an agreement that has this as the services attached to it. And then the template takes care of some of the requirements that you, as a public body, have to comply with.

TREASURER SHEAFE: Do we have to come back for a final vote, or can I -- if this motion passes, is that sufficient to move this process forward?

MR. COLLINS: It is sufficient, in my opinion, to authorize us to prepare the document and, when it's prepared, to be signed by the appropriate executive officers.

TREASURER SHEAFE: Okay.

CHAIRMAN McCUSKER: Any further conversation?
All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: Any opposed?

(The Board voted and the motion carried.)

CHAIRMAN McCUSKER: Thank you.

Okay. Mark, we're on a roll.

The streetscape status, to refresh everyone's memory, in the global settlement we reached the City, we agreed to provide three-quarters of a million dollars for downtown streetscapes.

We have confirmed, the City has to approve those projects. The Downtown Tucson Partnership presented a proposal to us that they manage that project consistent to what they've done with their facade program. We approved that, subject to receiving the West Side deed, which was -- turned out to be nice leverage.

And I guess we're waiting -- we have an agreement, Mark, that we forwarded to the City.

MR. COLLINS: That's correct.

Mr. Chairman, Members of the Board, we have drafted a three-party agreement that is among the District, the City, and Downtown Tucson Partnership. I have been in communication with City Attorney Rankin. And we're making progress but we're not there yet. There are some details
that need to be agreed to.

We want to make sure that the District gets credit for the $750 that it spends, credit against its obligation under the settlement agreement; and that it's tracked in such a way so that District's CFO and Michele can track the money.

CHAIRMAN McCUSKER: Okay. Do you -- are you going to need to bring that back here, then?

MR. COLLINS: I don't recall whether you -- I don't have the motion in front of me. But I believe that the executive officers can sign it once it's been finalized unless there's a substantial material change.

Because you authorized the expenditure of the $750,000 in a triparty agreement with the City of Tucson and DTP subject to the District receiving the deed for the West Side property.

CHAIRMAN McCUSKER: Okay. Sounds like we're good.

Item 10. And just an update for the Board and public.

The Arena is probably 90 percent-plus completed. It's actually spectacular, if you haven't had a chance tour it. We're waiting for the video boards to go up and some work still downstairs. But it will definitely be ready by Christmas and in time for our grand opening concert.

We have sold in the neighborhood of a couple
thousand tickets. We have a lot of corporate supporters now
that are coming forward to buy blocks of tickets. We've had
people buy a hundred or two hundred tickets to distribute
either to their employees or to charity.

But we clearly have a lot of capacity. That Arena
seats 9,000 people.

One of the thoughts I had, which I think would be
nice for our merchant members, is maybe we do something that
would offer the merchants within the District a two for one
or some other kind of exclusive relationship because they
are Rio Nuevo merchants. We could limit it to ten or do
something to allow the merchants to extend stuff to their
employees or customers as well.

So we do expect the concert will be well attended.
SMG, the new management there, has extended invitations to a
number of industry people.

We have tour promoters and town promoters and
production people coming to view the Arena in full concert
mode. We're gonna have a little VIP reception right before
the concert that SMG is hosting that we're invited to, the
Mayor and Council and some of these talent people as well.

So I think we're really going to showcase the
arena. But it would be nice, I think, if we wanted to, to
do something that would allow our merchants to attend.

TREASURER SHEAFE: Did you need a motion?
MS. COX: That would be a great idea.

CHAIRMAN McCUSKER: Yeah. The Board would have to approve it and we can establish.

MS. COX: So moved.

CHAIRMAN McCUSKER: -- some parameters if you want.

I would suggest that we offer our merchants, you know, two for one tickets up to some number, 10 or 12.

MR. RITCHIE: Fletcher, what's the -- Mr. Chairman, what's the -- what do you think the breakeven number is?

CHAIRMAN McCUSKER: With our $50,000 contribution, the concert's already paid for itself. We've sold enough tickets to cover all the band expenses. So we actually might make a little money depending on how the thing sells out.

But the intent was to keep the ticket price low. It's a $25 ticket because we're supporting basically half of the cost. And, you know, it's been very attractive, as I understand, not only to Beach Boy fans, but to people that just want to come experience the new arena.

SECRETARY IRVIN: Fletcher, it seems like we also -- if we're going to do something, you know, this is not something we can put off until December. If we're going to do something, we really need to do it at this meeting to
allow proper marketing to get out there, et cetera.

I don't have a problem with the two for one at a
10 or a 12, whatever that magical thing is. Ten seems to
work a little better.

TREASURER SHEAFE: Mr. Chairman, I'd like to
propose that we offer businesses that are located within the
District the opportunity to buy 30 tickets at half price.
And they can distribute those tickets as they wish.

MS. COX: I'm assuming that's that a motion,
because you said you propose. I second it.

TREASURER SHEAFE: I motioned it. My proposal
motion.

CHAIRMAN McCUSKER: So we have a motion by
Mr. Sheafe, seconded by Jannie, that we allow -- and they
would have to be bona fide TIF merchants, we can work with
staff on confirming that in the process -- but they can buy
up to 30 tickets at half price. And I'm assuming that is
per merchant.

TREASURER SHEAFE: Yeah. And my thought is that
if a merchant's real small, they can buy five. But they can
get up to 30 at half price.

CHAIRMAN McCUSKER: Any questions, comments?
All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: Any opposed?
(The Board voted and the motion carried.)

CHAIRMAN McCUSKER: Thank you very much.

Michele, we'll get to work on communicating to

that.

Mark, you want to update us on the gift clause

issue?

As a reminder, again, we tentatively approved an
investment in the January 8th Memorial Foundation. There
was some issues raised as to whether or not that's a
charitable gift and therefore violates the constitutional
gift clause.

We made that investment subject to approving this
legality. And we assigned that to you, Mr. Collins. So
what's the update there?

MR. COLLINS: Mr. Chairman, Members of the Board,
as the Board is aware, it has been and -- is and has been my
opinion that the District is not subject to the gift clause.

The gift clause was enacted as part of the Arizona
Constitution in 1910, which would -- if that was all we had
in the Constitution, it would subject you to that.

In 1940, however, the Arizona Constitution was
amended with what is referred to as the exemption clause.
And the exemption clause says that tax-leveeing, public
improvement districts are not subject to the gift clause.
The statutes that created this District or that allowed this District and others to be created were enacted in 1990. And this District and others created under those statutes is a tax-levee, public improvement district. And, as such, it's my opinion that this District is not subject to the gift clause. Since the last meeting, I've requested an opinion from the Attorney General's office. I haven't gotten a response yet. I also provided my analysis to the Goldwater Institute. And the Goldwater Institute, at least at this time, has declined to weigh in on the subject. SECRETARY IRVIN: So what are your recommendations for us?

MR. COLLINS: My recommendations are, you're not subject to the gift clause. You're subject to a lot of other limitations. This is public money that you're dealing with. You have to keep in mind the purpose of the District and the use of the money. But the gift clause is not among your restrictions. That's my recommendation.

SECRETARY IRVIN: What's the situation, do you think, with the AG, as far as getting a response. You know, are we gonna get one, or are we going to be sitting here next meeting without one again?

I shouldn't say again. MR. COLLINS: Mr. Secretary, I don't know. But if
I were a betting man -- and I'm unfortunately not -- I would say we'll have a response. Whether they weigh in or not's a different topic. It's certainly possible that they would elect to decline like the Goldwater Institute did.

That said, the Attorney General is really your attorney. And so I would expect that there will be an opinion. Keep in mind, however, that the Attorney General is changing and there's all kinds of changes going on up there, so . . .

CHAIRMAN McCUSKER: Given that, are they likely to just table everything they're working on to get new priorities from the new AG, or would they continue to process these kinds of requests?

MR. COLLINS: My opinion is that there's a lot of tabling going on. I understand that the floor of the building where the AG's office is and where Attorney General Horn had been living -- or officing is essentially empty and it's in transition. So, you know, the folks that are rendering these kinds of opinions are not on that floor, but it's going to have a trickle-down effect, so . . .

SECRETARY IRVIN: Mr. Chair, I'd just recommend that we table this to the next meeting. I'd love to move it forward. But I still think we ought to give them the respect of allowing them ample time to respond. Because, you know, we've just asked them about three weeks ago. I
don't remember what the date was.

CHAIRMAN McCUSKER: I agree. I think it's a sensitive issue. I think, you know, Mr. Hill made it pretty clear that he really wants to understand the legality of this. So I think we ought to wait and see what the AG says.

MR. COLLINS: I will take that as instruction to continue to press the issue with the Attorney General's office.

MR. HILL: Mr. Chairman?

CHAIRMAN McCUSKER: Yes?

MR. HILL: My experience with working with attorney general's over the years, typically, when they are requested for an opinion -- certainly at the legislative level, it was -- it was pretty common -- some of them responded quickly and others, they didn't at all.

But typically, as a minimum, somebody will call and say, well, we think it's this. Do you want us to put that in writing, or do you just want this to go away?

And many times, we would say, no, we don't like that, and just let it go away.

So I'm thinking somebody will call you. You may never get anything in writing. But I think you will get an answer that you will be able to convey to us their thought process on it. Or even if they don't have one, similar to the Goldwater Institute.
And I would, you know, certainly suggest too that, if they just don't get into the issue, it doesn't mean they're endorsing the position. That's the only clear point.

But sometimes their position on it may be worse than when you started. And they don't want you to opine it in writing. But I think you may hear from them.

MR. COLLINS: Mr. Hill, I appreciate that. And I will -- I will continue to press the issue. I recognize the importance of it, both generally and with respect to the immediate issues before the Board.

CHAIRMAN McCUSKER: Okay. And now is the time we have for call to the audience.

Michele, any cards filled in?

All right. I would like to publicly acknowledge Alberto Moore's contributions to this effort. He's been on the Board since the legislature intervened. It's not always been cozy between all of us. But, clearly, I think Alberto operated with a passion for his community. And we're grateful for his service.

With that, I can take a motion to adjourn.

SECRETARY IRVIN: So moved.

MS. COX: Second.

CHAIRMAN McCUSKER: All in favor, say aye.

(Ayes.)
CHAIRMAN McCUSKER: See you in December.

(The meeting concluded at 2:19 p.m.)

--o0o--
CERTIFICATE

I, John Fahrenwald, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of typewritten matter are a true, accurate, and complete transcript of all the matters adduced to the best of my skill and ability.

________________________
John Fahrenwald